

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WENDY WOLKENSTEIN, et al.,
Plaintiff(s),
v.
DAN HEINRICH, et al.,
Defendant(s).

Case No. 2:25-cv-01138-APG-NJK

REPORT AND RECOMMENDATION

[Docket No. 1]

DAN HEINRICH, et al.,
Defendant(s).

Plaintiffs have requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*. Docket No. 1.

The Court may authorize the commencement of an action without prepayment of fees and costs, or security therefor, by a person who has shown an inability to pay such costs. 28 U.S.C. § 1915(a)(1). A determination of whether the plaintiff has shown an inability to pay is a matter left to the discretion of the Court. *See, e.g., Flores v. Colvin*, 2014 U.S. Dist. Lexis 93236, at *2 (D. Nev. May 22, 2014), *adopted*, 2014 U.S. Dist. Lexis 93234 (D. Nev. July 9, 2014). While an applicant need not be absolutely destitute to qualify for a waiver of costs and fees, the applicant must demonstrate an inability to pay those costs while still providing for the necessities of life. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

Only Plaintiff Wendy Wolkenstein filed an application to proceed *in forma pauperis*.¹ The application identifies annual wages of \$70,000, along with an additional \$10,000 annual profit from rental property, *see* Docket No. 1 at 1, which greatly exceeds the federal poverty guidelines for a family of five, *cf. Andrea L.M. v. O'Malley*, 2024 U.S. Dist. Lexis 117157, at *2 (D. Nev.

¹ When multiple plaintiffs join in the same suit, they must each file an application to proceed *in forma pauperis* and each Plaintiff must qualify for *in forma pauperis* status. See, e.g., *Remmert v. Newsome*, 2023 WL 1806277, at *1 (E.D. Cal. Jan. 31, 2023). Given the ability to pay found herein, the Court need not order Plaintiff Knepp to file her own application.

1 July 3, 2024). That monthly income is also well above the amounts that have led to denial of *in*
 2 *forma pauperis* status, *see, e.g.*, *Brunson v. Soc. Sec.*, 2019 WL 6709544, at *1 (D. Nev. Oct. 31,
 3 2019) (denying *in forma pauperis* status based on monthly income of \$1,397), *adopted*, 2019 WL
 4 6700193 (D. Nev. Dec. 9, 2019), and the Court has rejected similar requests, *see Andrea L.M.*,
 5 2024 U.S. Dist. Lexis 117157, at *2. Moreover, the application identifies only \$1,800 in monthly
 6 expenses, which are amply covered by the income identified. *See Docket No. 1 at 2.* Lastly, the
 7 application identifies \$1,000 in cash or bank accounts, along with \$20,000 in stocks. *Id.*² In short,
 8 Plaintiff Wolkenstein is able to pay the filing fee.

9 Accordingly, the undersigned **RECOMMENDS** that the application to proceed *in forma*
 10 *pauperis* be **DENIED** and that Plaintiffs be required to pay the filing fee in prompt fashion within
 11 a specified timeframe.

12 Dated: June 27, 2025



13
14 Nancy J. Koppe
United States Magistrate Judge

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16 **NOTICE**

17 This report and recommendation is submitted to the United States District Judge assigned
 18 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and
 19 recommendation must file a written objection supported by points and authorities within fourteen
 20 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file
 21 a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951
 22 F.2d 1153, 1157 (9th Cir. 1991).

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28 ² The application is incomplete given that Plaintiff Wolkenstein identifies a mortgage, but
 fails to identify owned real estate and the value thereof. *See id.* at 2.